

RAYMUNDO J. CHICO

IBLA 87-681

Decided May 30, 1990

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims null and void ab initio. W MC 230232
et al.

Reversed and remanded.

1. Boundaries--Federal Land Policy and Management Act of 1976:
Wilderness--Mining Claims: Lands Subject to--Mining Claims:
Location--Mining Claims: Lode Claims--Mining Claims: Withdrawn
Land--Wilderness Act--Withdrawals and Reservations: Effect of

Where BLM declares mining claims null and void ab initio due to location on unavailable wilderness land, but the mining claimant offers a map to show that some of the mining claims lie entirely on land open to mineral entry and other claims only partially overlap wilderness land, the decision will be reversed and remanded to BLM to verify the location of the overlapping claims.

APPEARANCES: Raymundo J. Chico, pro se, and Joy K. Moseley, Senior Landman, American Copper & Nickel Company, Inc., Wheat Ridge, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BYRNES

Raymundo J. Chico has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated June 26, 1987, declaring unpatented lode mining claims (see Appendix A) null and void ab initio. According to the BLM decision, the claims were located on wilderness area lands, segregated from mineral entry on December 31, 1983.

The claims the BLM decision listed 1/ were located on May 22 and 25, 1986, in secs. 13, 14, 15, 16, 21, and 22 in T. 14 N., R. 80 W., sixth

1/ The BLM decision states that "63 unpatented lode mining claims (See enclosure 1) * * * are hereby declared null and void ab initio." However, only the 45 claims enumerated at Appendix A of this decision were listed on "enclosure 1" of the BLM decision.

principal meridian, in the Medicine Bow National Forest, in Carbon County, Wyoming. BLM failed to include a master title plat for this township in the case file and did not offer any response to appellant's statement of reasons. However, the location map for these claims shows that they form part of a block of claims south of the Savage Run Wilderness Area with 22 of the 45 disputed claims extending across the irregular southern boundary of the wilderness area. ^{2/}

Appellant asserted that the disputed claims were valid because the wilderness area was north of the claim block. Appellant and his lessee submitted maps of the Savage Run Wilderness Area and an official description of the boundary of the Savage Run Wilderness, certified by the United States Forest Service, and conceded that portions of some claims bordering the wilderness may have extended onto land not open to mineral entry.

[1] A mining claim located on land which is not open to location confers no rights on the locator and is properly declared null and void ab initio. James E. Morgan, 104 IBLA 204 (1988); John L. Grassmeier, 77 IBLA 156 (1983). Any claims which were located on land unavailable for mineral entry, e.g. a wilderness area, would properly be declared null and void ab initio. The Wilderness Act, 16 U.S.C. § 1133(d)(3) (1982), allowed mining locations within national forest wilderness areas until December 31, 1983. See Pacific Legal Foundation v. Watt, 529 F. Supp. 982, 1003 (D. Mont. 1981). Thus, land in the Savage Run Wilderness Area was not available for mining location after that date.

However, the maps do show the Savage Run Wilderness Area boundary to be north of appellant's block of claims. Some of the disputed claims lie entirely outside the wilderness area. The BLM decision is reversed as to those claims which lie outside the wilderness area.

Some of the disputed claims in the northernmost row of claims in the block appear to straddle the irregular boundary of the wilderness area. Unpatented lode mining claims which lie only partially on withdrawn land are not null and void ab initio. James N. McDaniel, 105 IBLA 40, 43 (1988); Noranda Exploration, Inc., 92 IBLA 61 (1986). ^{3/} The validity of such overlapping claims would depend on whether the claims were supported by discovery on land which is open to mineral entry. Leslie Corriea, 93 IBLA 346, 349 (1986); Timberline Mining Co., 87 IBLA 264, 265 (1985).

Accordingly, we reverse the BLM decision as to these claims also and remand the case to BLM to determine to what extent they are located on withdrawn land. Amelia Marglin Whitson, 101 IBLA 1, 4 (1988); Noranda Exploration, Inc., *supra*. In determining the location of the mining claims, the situs of the claims on the ground as disclosed by their

^{2/} The Savage Run Wilderness was designated on Feb. 24, 1978, 92 Stat. 42.

^{3/} The end and side lines of such claims may be extended across withdrawn or segregated land in order to define any extralateral rights to veins which apex within the claim. Amelia Marglin Whitson, 101 IBLA 1, 4 (1988); Outline Oil Corp., 95 IBLA 255 (1987); James W. Phillips, 92 IBLA 58 (1986); see Santa Fe Mining, Inc., 79 IBLA 48 (1984).

monuments will control over any conflicting descriptions or maps. See Outline Oil Corp., 95 IBLA at 258; United States v. Kincanon, 13 IBLA 165, 168 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is reversed and the case is remanded for further action in accordance with this opinion.

James L. Byrnes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

APPENDIX A

Although the BLM decision purported to affect 63 claims, only these 45 claims were listed:

| <u>BLM Serial Number</u> | <u>Claim Name</u> |
|--------------------------|-------------------|
| W MC-230232 | Run No. 1 |
| W MC-230234 | Run No. 3 |
| W MC-230236 | Run No. 5 |
| W MC-230238 | Run No. 7 |
| W MC-230240 | Run No. 9 |
| W MC-230242 | Run No. 11 |
| W MC-230244 | Run No. 13 |
| W MC-230246 | Run No. 15 |
| W MC-230248 | Run No. 17 |
| W MC-230250 | Run No. 19 |
| W MC-230252 | Run No. 21 |
| W MC-230254 | Run No. 23 |
| W MC-230256 | Run No. 25 |
| W MC-230258 | Run No. 27 |
| W MC-230260 | Run No. 29 |
| W MC-230262 | Run No. 31 |
| W MC-230264 | Run No. 33 |
| W MC-230268 | Run No. 37 |
| W MC-230269 | Run No. 38 |
| W MC-230270 | Run No. 39 |
| W MC-230271 | Run No. 40 |
| W MC-230272 | Run No. 41 |
| W MC-230273 | Run No. 42 |
| W MC-230274 | Run No. 43 |
| W MC-230275 | Run No. 44 |
| W MC-230276 | Run No. 45 |
| W MC-230277 | Run No. 46 |
| W MC-230278 | Run No. 47 |
| W MC-230279 | Run No. 48 |
| W MC-230298 | Run No. 67 |
| W MC-230299 | Run No. 68 |
| W MC-230300 | Run No. 69 |
| W MC-230301 | Run No. 70 |
| W MC-230338 | Run No. 107 |
| W MC-230340 | Run No. 109 |
| W MC-230342 | Run No. 111 |
| W MC-230344 | Run No. 113 |
| W MC-230346 | Run No. 115 |
| W MC-230348 | Run No. 117 |
| W MC-230350 | Run No. 119 |
| W MC-230352 | Run No. 121 |
| W MC-230354 | Run No. 123 |
| W MC-230356 | Run No. 125 |
| W MC-230358 | Run No. 127 |
| W MC-230360 | Run No. 129 |

